

NAME

Mark Steven Villegas

PRISON NUMBER

V50853

Donovan State Prison

CURRENT ADDRESS OR PLACE OF CONFINEMENT

PO Box 799003 San Diego, CA 92179

CITY, STATE, ZIP CODE

|                         |   |       |
|-------------------------|---|-------|
| 2254                    | ✓ | 1983  |
| <b>FILING FEE PAID</b>  |   |       |
| Yes                     | ✓ | No    |
| <b>HYP MOTION FILED</b> |   |       |
| Yes                     | ✓ | No    |
| <b>COPIES SENT TO</b>   |   |       |
| Court                   | ✓ | ProSe |

FILED

2007 OCT 19 PM 3:06

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

MARK STEVEN VILLEGAS

(FULL NAME OF PETITIONER)

**PETITIONER**

v.

JAMES E. TILTON, Secretary of CDCR

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED  
PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE  
CALIFORNIA DEPARTMENT OF CORRECTIONS])

**RESPONDENT**

and

EDMOND G. BROWN, JR.

The Attorney General of the State of  
California, Additional Respondent.

**'07CV 2035BTM**

**BLM**

Civil No. \_\_\_\_\_

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

**PETITION FOR WRIT OF HABEAS CORPUS**

UNDER 28 U.S.C. § 2254  
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack:  
San Diego Superior Court, San Diego, CA
2. Date of judgment of conviction: 09/10/04
3. Trial court case number of the judgment of conviction being challenged:  
SCD 177795
4. Length of sentence: 95 years to life plus 25 years

5. Sentence start date and projected release date:

Sept. 10, 2004. Release date N/A

6. Offense(s) for which you were convicted or pleaded guilty (all counts):

3 counts rape (PC 261(a)(2))  
5 counts forcible oral cop (PC 288a(c)(2))  
1 count robbery (PC 211)

7. What was your plea? (CHECK ONE)

(a) Not guilty ☒

(b) Guilty ☐

(c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

(a) Jury ☒

(b) Judge only ☐

9. Did you testify at the trial?

☐ Yes ☒ No

**DIRECT APPEAL**

10. Did you appeal from the judgment of conviction in the **California Court of Appeal**?

☒ Yes ☐ No

11. If you appealed in the **California Court of Appeal**, answer the following:

(a) Result: Affirmed

(b) Date of result, case number and citation, if known:

5/16/2006 D045107 unpublished

(c) Grounds raised on direct appeal:

- 1) Denial of motion to sever counts
- 2) Erroneous Judicial Response to Jury Question
- 3) Instructional Error on use of force and failure to instruct on duress menace or fear
- 4) Error in refusing to release juror information
- 5) Cumulative Error

12. If you sought further direct review of the decision on appeal by the **California Supreme Court** (e.g., a Petition for Review), please answer the following:

(a) Result: Petition for Review denied

(b) Date of result, case number and citation, if known:

8/2/2006; S144642

(c) Grounds raised:

- 1) Court erred by instructing the jury it could consider evidence of all charges to determine guilt on individual charges.
- 2) Error in court's refusal to instruct jury on definition of force.

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result:
- (b) Date of result, case number and citation, if known:
- (c) Grounds raised:

**COLLATERAL REVIEW IN STATE COURT**

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☐ Yes ☒ No

15. If your answer to #14 was "Yes," give the following information:

(a) California Superior Court Case Number: \_\_\_\_\_

(b) Nature of proceeding: N/A

(c) Grounds raised:

N/A

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

- (a) **California Court of Appeal** Case Number: \_\_\_\_\_
- (b) Nature of proceeding: \_\_\_\_\_
- (c) Grounds raised: N/A
- (d) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☒ No
- (e) Result: \_\_\_\_\_
- (f) Date of result: \_\_\_\_\_

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?

☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information:

- (a) **California Supreme Court** Case Number: \_\_\_\_\_
- (b) Nature of proceeding: N/A
- (c) Grounds raised: \_\_\_\_\_
- (d) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☒ No
- (e) Result: \_\_\_\_\_
- (f) Date of result: \_\_\_\_\_

20. If you did **not** file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court containing the grounds raised in this federal Petition, explain briefly why you did not:

### **COLLATERAL REVIEW IN FEDERAL COURT**

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (If "YES" SKIP TO #22)

- (a) If no, in what federal court was the prior action filed?

(i) What was the prior case number? \_\_\_\_\_

- (ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: \_\_\_\_\_

- (b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

- (c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

---

**CAUTION:**

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present ***all*** other grounds to the California Supreme Court before raising them in your federal Petition.
  - **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
  - **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.
-

**GROUND FOR RELIEF**

22. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.**

**(a) GROUND ONE:**

Trial court's answer to a jury question allowing jury to consider evidence of all counts as proof of the individual counts deprived me of right to proof of guilt on each charge beyond a reasonable doubt in violation of 5th, 6th, and 14th Amendments

**Supporting FACTS (state *briefly* without citing cases or law)**

During deliberations, the jury submitted two questions: "QUESTION: Can we use evidence from other cases to judge any given case or count?" and "Can we use cumulative evidence of separate counts to determine each count? E.g. the box example" Over defense objection, the judge read the jury the following instruction: "Each count must be proved separately and beyond a reasonable doubt. In determining whether a particular count has been proved beyond a reasonable doubt, you may consider the entire body of evidence presented at trial, the facts as you determine them to be, and any reasonable inferences that you draw from them." The jury returned with verdicts shortly after the new instruction was given.

**Did you raise GROUND ONE in the California Supreme Court?**

☒ Yes ☐ No.

**(b) GROUND TWO:**

Court's refusal to instruct the jury that the term "force" requires physical force substantially greater than necessary to accomplish sexual intercourse deprived me of 6th and 14th Amendment rights to have jury adequately instructed on guilt BRD

**Supporting FACTS** (state *briefly* without citing cases or law):

Counsel submitted a proposed instruction that read, "The term 'force' means physical force that is substantially different from or substantially greater than that necessary to accomplish the sexual intercourse itself." Trial Court refused to give instruction.

**Did you raise GROUND TWO in the California Supreme Court?**

☒ Yes ☐ No.

(c) **GROUND THREE:**

**Supporting FACTS** (state *briefly* without citing cases or law):

**Did you raise GROUND THREE in the California Supreme Court?**

☐ Yes ☒ No.



(d) **GROUND FOUR:**

**Supporting FACTS** (state *briefly* without citing cases or law):

**Did you raise GROUND FOUR in the California Supreme Court?**

☐ Yes ☐ No.

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: \_\_\_\_\_

(b) Case Number: \_\_\_\_\_

(c) Date action filed: \_\_\_\_\_

(d) Nature of proceeding: \_\_\_\_\_

(e) Grounds raised: \_\_\_\_\_

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial: Stephen R. Brodsky, 1010 Second Ave, ste 2300, San Diego, CA 92101

*Brian White 2404 Broadway 2<sup>nd</sup> Floor  
San Diego, CA 92102*

(d) At sentencing: same

(e) On appeal: Nancy J. King, 1400 Sixth Ave., ste 210C, San Diego, CA 92101

(f) In any post-conviction proceeding:

(g) On appeal from any adverse ruling in a post-conviction proceeding:

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court:

Oct 15, 2007

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

Oct 15, 2007

(DATE)

Mark S. Villan

SIGNATURE OF PETITIONER

JS44

(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I (a) PLAINTIFFS

Mark Steven Villegas

|                  |       |
|------------------|-------|
| 2254             | 1983  |
| FILING FEE PAID  |       |
| Yes              | No    |
| IFP MOTION FILED |       |
| Yes              | No    |
| COPIES SENT TO   |       |
| Court            | ProSe |

James E. Tilton, et al

2007 OCT 19 PM 3:06

SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (EXCEPT IN U.S. PLAINTIFF CASES ONLY) BY Rm DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Mark Steven Villegas  
PO Box 799003  
San Diego, CA 92179  
V-50853

ATTORNEYS (IF KNOWN)

'07CV 2035 BTM BLM

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PT                         | DEF                        |   | PT                         | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

| CONTRACT   | TORTS  |   | FORFEITURE/PENALTY  | BANKRUPTCY   | OTHER STATUTES   |
|--|--|---|---|--|--|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> Marine<br><input type="checkbox"/> Miller Act<br><input type="checkbox"/> Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits<br><input type="checkbox"/> 160 Stockholders Suits<br><input type="checkbox"/> Other Contract<br><input type="checkbox"/> 195 Contract Product Liability | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 362 Personal Injury-Medical Malpractice<br><input type="checkbox"/> 365 Personal Injury-Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture<br><input type="checkbox"/> 620 Other Food & Drug<br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 630 Liquor Laws<br><input type="checkbox"/> 640 RR & Truck<br><input type="checkbox"/> 650 Airline Regs<br><input type="checkbox"/> 660 Occupational Safety/Health<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (13958)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(a))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reappointment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce/ICC Rates/etc.<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 810 Selective Service<br><input type="checkbox"/> 850 Securities/Commodities Exchange<br><input type="checkbox"/> 875 Customer Challenge 12 USC<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><input type="checkbox"/> 950 Constitutionality of State<br><input type="checkbox"/> 890 Other Statutory Actions |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Tort to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 444 Welfare<br><input type="checkbox"/> 440 Other Civil Rights  | <b>PRISONER PETITIONS</b><br><input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus<br><input checked="" type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights   |   |  |  |

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE October 19, 2007

SIGNATURE OF ATTORNEY OF RECORD

Rm